

Statement of Basis

NPDES Permit For Stormwater Discharges from the Portions of the Brown County, Wisconsin's Regulated Municipal Separate Storm Sewer System (MS4) located within the Reservation of the Oneida Tribe of Indians of Wisconsin To Waters of the United States

Permit No.: **WI0073008**

Public Notice No.: **10-04-01-A**

Permit issued on [the date of signature and to be determined]

Permit will expire on [five years from the date of signature]

Statutory and Regulatory Background

EPA published Phase I of the national stormwater regulations in 1990 and required medium and large municipal separate storm sewer systems (MS4s) to apply for a National Pollutant Discharge Elimination System (NPDES) permit for their stormwater discharges (Federal Register/Vol. 55, No. 222, 11/16/1990, pg.47990). In 1999, EPA published Phase II of the national stormwater regulations. Operators of regulated small MS4 were required to apply for permit coverage by March 2003 (Federal Register/Vol. 64, No. 235, 12/8/1999, pg.68722). NPDES permits issued to Phase II MS4s require small MS4s to develop and implement a stormwater management program which addresses the six minimum control measures described in the rule:

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Erosion and Sediment Control
- Post-Construction Erosion and Sediment Control
- Pollution Prevention/Good Housekeeping

For each of the minimum control measures, the operator must develop and implement best management practices (BMPs) to reduce pollutants in discharges to the maximum extent practicable, and establish measurable goals for each minimum control measure. See 40 CFR 122.34(b) and (d).

The area of Brown County (Permittee) located within the Green Bay urbanized area is a regulated small MS4 community. An urbanized area as delineated by the Bureau of Census is defined as a central place or places and the adjacent densely settled surrounding area that together have a residential population of at least 50,000 people and overall population density of at least 500 people per square mile.

A Federal NPDES permit is being issued for the Brown County MS4 discharges located within the boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin. See Appendix 1 to the Preamble - Federally - Recognized American Indian Areas Located Fully or Partially in Bureau of The Census Urbanized Areas (Federal Register/Vol. 64, No. 235, 12/8/1999, pg. 68803). NPDES permits for discharges in Indian Country are issued by U.S. EPA. *Indian Country*, as defined in 18 USC 1151, means: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished. This definition includes all land held in trust for a Federally-recognized American Indian Tribe. Pursuant to the definition, the Reservation of the Oneida Tribe of Indians of Wisconsin is part of Indian Country and permits for discharges within the Reservation boundaries are the responsibility of U.S. EPA.

Brown County Application History

Brown County is a regulated small MS4 community with a total population of 226,778 and a municipal population within the Urbanized Area is 192,561, as reported on the Permittee's June 2, 2006 notice of intent (NOI) submitted to the Wisconsin Department of Natural Resources.

On June 2, 2006, Brown County submitted a NOI to the Wisconsin Department of Natural Resources to apply for coverage under the Wisconsin Pollutant Discharge Elimination System MS4 general permit for the urbanized area within the Green Bay urbanized area, excluding the area located within the Oneida Reservation. By copy of the June 2, 2006 NOI to the U.S. Environmental Protection Agency, the Permittee requested coverage under a Federal NPDES MS4 permit for the area of the Permittee's MS4 located within the urbanized area and within the Oneida Reservation.

On May 12, 2009, EPA sent a follow-up letter to Brown County requesting a listing of applicable permits or construction approvals for activities located within the Oneida Reservation which Brown County has received or applied for under any of the programs listed at Title 40 of the Code of Federal Regulations, Section 122.21(f)(6) and whether discharges from its small MS4 affect Federally-listed endangered or threatened species or critical habitat, or historic properties.

On July 9, 2009, Brown County responded with a list of applicable permits and construction approvals, and findings from the U.S. Fish and Wildlife Service that no federally-listed species would be expected within the proposed project area. The letter also indicated pursuant to a check with the Oneida Tribal Historical Preservation Officer, no historic properties would be expected within the project area.

On the basis of preliminary staff review and applicable standards and regulations, the Regional Administrator of the EPA, Region 5, proposes to issue a permit for stormwater discharges from the areas of the Permittee's MS4 located within the urbanized area and within the Oneida

Reservation.

Why we regulate MS4s and what kinds of pollutants may discharge to U.S. waters

Stormwater discharges from MS4s in urbanized areas are a concern because of the presence of pollutants in these discharges. Common pollutants include oil and grease from roadways, pesticides from lawns, sediment from construction sites, and trash such as cigarette butts, paper wrappers, and plastic bottles. Bacteria is also commonly present in stormwater discharges. Stormwater picks up and transports these pollutants and then discharges them, untreated, to waterways via separate storm sewer systems. When left uncontrolled these discharges may impair receiving waters, thereby discouraging recreational use of the resource, contaminating drinking water supplies, and interfering with habitat of fish, other aquatic organisms, and wildlife.

Requirements of Federal Law

Comply with Endangered Species Act

Section 7 of the Endangered Species Act requires Federal agencies to insure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat. As noted above, on July 9, 2009, Brown County forwarded to U.S. EPA a list of applicable permits and construction approvals, and findings from the U.S. Fish and Wildlife Service that no federally-listed species would be expected within the proposed project area.

Comply with National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that Federal agencies having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking or independent agency having authority to license any undertaking shall take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. Federal agencies shall afford the Advisory Council on Historic Preservation established under Title II of NHPA a reasonable opportunity to comment with regard to such undertaking.

As noted above, on July 9, 2009, Brown County forwarded to U.S. EPA a list of applicable permits and construction approvals. The letter also indicated pursuant to a check with the Oneida Tribal Historical Preservation Officer, no historic properties would be expected within the project area.

Summary of Permit Conditions

Permit Coverage

The proposed permit will cover stormwater discharges to waters of the U.S. from all existing and new outfalls of the Permittee's MS4 located within the Green Bay urbanized area and within the delineated boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin. This permit also authorizes the discharge of certain non-stormwater sources provided, as described in Section 1.2.2.2 of the permit, so long as EPA has not determined these sources to be substantial contributors of pollutants to the MS4.

Stormwater Management Program and Six Minimum Control Measures

The Permit requires the Permittee to develop and implement a stormwater management plan (SWMP) which includes BMPs and measurable goals for the following six minimum control measures:

1. Public Education and Outreach - Informing individuals, businesses and organizations within the MS4 area as to the impact of contaminated stormwater discharges on surface water quality and how they can help reduce stormwater contamination.
2. Public Participation and Involvement - Creating opportunities for individuals and organizations to participate in the development and implementation of activities to reduce the contamination of stormwater.
3. Illicit Discharge Detection and Elimination - A program to detect and eliminate cross-connections, dumping of wastes and other non-stormwater discharges into the storm sewer system.
4. Construction Site Runoff Control - A program to implement erosion and sediment controls for construction sites where one or more acres of land is disturbed.
5. Post-Construction Runoff Control - A program requiring the development, implementation and maintenance of controls on sites after development or redevelopment to address stormwater pollutants and flow issues. The post-construction requirements in the proposed permit include performance standards addressing Total Suspended Solids Control, Peak Discharge Rate, and Infiltration/Hydrology. The Infiltration/Hydrology performance standards are needed to help ensure new development/redevelopment, and the impervious surfaces that are constructed, do not impair the quality of the receiving waters. The requirements are equivalent to State of Wisconsin post-construction requirements.

6. Pollution Prevention/Good Housekeeping - A program to minimize pollutant discharges from municipal operations such as garages, salt piles, landscaping and storage and use pesticides, etc.

Note that most of the Brown County MS4 covered under this permit is sewers and drainage ditches managing runoff from the County road system. The minimum control measures to be implemented under this permit will be tailored to the scope and nature the Permittee's MS4.

The Permittee will submit the minimum control measures required in the storm water management program to EPA Region 5 for review and approval according to the compliance schedule in the permit.

Effluent Limits

Section 2 of the permit contains non-numeric effluent limits. This section of the permit requires Brown County to reduce the discharge of pollutants to the maximum extent practicable (MEP) in compliance with the management practices, control techniques, systems, design and engineering methods, and other provisions required under this permit. This section of the permit also prohibits non-stormwater discharges into the storm sewer system (except as allowed pursuant to Section 1.2.2.2 of the permit) and requires that the Permittee shall not discharge the following substances from the MS4:

- Solids that settle to form putrescence or otherwise objectionable sludge deposits.
- Oil, grease, or other floating material that form noticeable accumulations of debris, scum, foam, or sheen.
- Color or odor that is unnatural and to such a degree as to create a nuisance.
- Toxic substances in amounts harmful to aquatic life, wildlife, or humans.
- Nutrients conducive to excessive growth of aquatic plants and algae to the extent that such growth is detrimental to desirable forms of aquatic life, creates conditions that are unsightly, or is a nuisance.
- Any other substances that impair, or threaten to impair, beneficial uses of the receiving waters.

Section 5 of the permit contains discharge observation requirements to assess compliance with the effluent limits and the minimum control measures enumerated in the permit.

Controlling Discharges to the Maximum Extent Practicable

The Permittee must reduce the discharge of pollutants to the maximum extent practicable (MEP) to protect water quality, and satisfy the applicable water quality requirements of the Clean Water Act. The federal Clean Water Act (CWA) requires that regulated MS4s “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator [of EPA] or the State determines appropriate for the control of such pollutants.”

EPA sees MEP as an iterative process -- MEP should continually adapt to current conditions and new BMPs and technologies. Successive iterations of BMPs and measurable goals will be driven by the objective of ensuring discharges support achievement of water quality standards.

For the purposes of this permit and this permit cycle, EPA Region 5 considers MEP to be implementation of measures to meet Sections 2 (Effluent Limitations), 3 (Special Conditions) and 4 (Stormwater Management Program) of the permit. With regard to the post-construction control measures, if the permittee complies with the requirements in Section 4 of the permit and in Appendix A, EPA Region 5 would consider that to meet MEP for this permit cycle.

Compliance Monitoring and Assessment of Program Effectiveness

EPA regulations require permits to prescribe monitoring as needed to assure compliance with the effluent limits. See 40 CFR 122.44(i). The Permittee must evaluate program effectiveness, the appropriateness of identified BMPs, and progress toward achieving identified measurable goals. The results of annual program reviews will be reported on in annual reports to EPA.

The proposed permit in Section 5 contains discharge observation and assessment requirements. The objective of these requirements is to assess stormwater management program performance and to determine compliance with the narrative effluent limitations in Section 2 of the permit. The importance of these objectives is weighed against logistical considerations and the burden to the MS4 operator. The proposed permit requires the Permittee to conduct visual observations/assessments of at least 20% of the Permittee's outfalls (discharge locations) each year in the spring, summer, or fall. Visual observations/assessments must be within ½ day after the start of a measurable storm event.

In addition to conducting visual observations/assessments during or soon after wet weather events, the program to detect and eliminate illicit discharges requires field screening in dry weather. Flow in the MS4 in dry weather is a strong indication there may be an illicit connection conveying flows to the stormwater system or illegal dumping.

If the permittee discharges to surface waters for which a total maximum daily load (TMDL) has been approved, the permittee will describe a monitoring program to determine whether the stormwater controls are adequate to meet the waste load allocation or other performance requirements of the TMDL. Currently, EPA has not approved any TMDLs for water bodies to which the County's MS4 discharges. Information on approved TMDLs in Region 5 can be found at: http://www.epa.gov/region5/water/wshednps/topic_tmdls.htm#states.

Recordkeeping

The Permittee must retain records of all information required to be generated under the permit for a period of at least three years. In accordance with 40 CFR 122.34(g)(2), the Permittee must make the records and the description of the stormwater management program available to the

public if requested to do so in writing.

Annual Report

In accordance with 40 CFR 122.34(g)(3), the Permittee must submit annual reports to EPA, Region 5 office, as described in Part 4.3 of the permit. The first annual report is due March 31, 2011.

Procedures for reaching a final decision on the proposed permit

Comment Period: Interested parties may submit written comments on the draft permit within 30 days of the date of the public notice. Comments should be delivered or mailed to:

Attention: Brian Bell
U.S. Environmental Protection Agency, Region 5
NPDES Programs Branch (WN-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Interested parties may also send electronic comments via email to: bell.brianc@epa.gov

Where to find a copy of the proposed permit: Send your request to the above address or via email to bell.brianc@epa.gov, or an electronic copy of the draft permit can be found at the following internet address: <http://www.epa.gov/region5/water/npdestek/notices.htm>.

Procedures for requesting a hearing: Any person may request a public hearing on the issuance of this permit. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. The request must be submitted in writing within 30 days of the date of the Public Notice, and should be mailed or delivered to the above address or via email to: bell.brianc@epa.gov. EPA, Region 5 will hold a public hearing if there is a significant degree of public interest in the draft permit.

For additional information: Please contact Brian Bell at the above address, via email to: bell.brianc@epa.gov or by calling (312) 886-0981.